Supreme Court, U.S.
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No. ____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

STATE OF MARYLAND,
Petitioner,

v.

MICHAEL PATRON HUGHES,
Respondent.

On Petition For Writ of Certiorari To The Court of Appeals of Maryland

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does a question on a standard arrest intake form that concerns the arrestee's narcotics or drug use and is asked of all arrestees regardless of their charged offenses come within the "routine booking question" exception to *Miranda v. Arizona*?

PARTIES TO THE PROCEEDING

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Petitioner, the State of Maryland, respectfully requests that a writ of certiorari issue to review the judgment of the Court of Appeals of Maryland in this case.

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland reversing the judgment of the Court of Special Appeals of Maryland is reported, *Hughes v. State*, 346 Md. 80, 695 A.2d 132 (1997), and is reproduced in Appendix A. (App. 1a-23a).

The opinion of the Court of Special Appeals of Maryland affirming the judgment of the Circuit Court for Prince George's County, Maryland , is unreported, *Hughes v. State*, No. 808, Sept. Term, 1995 (filed March 27, 1996), and is reproduced in Appendix B. (App. 24a-36a).

STATEMENT OF JURISDICTION

The decision of the Court of Appeals of Maryland reversing Hughes's convictions was filed on June 17, 1997. This petition is filed within ninety days of that judgment, as required by Rule 13 of the Rules of the Supreme Court. Therefore, jurisdiction of this Court is properly invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment V provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of

War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

On October 14, 1993, Police Corporal David Morrissette arrested Respondent Michael Hughes on suspicion of drug distribution. (App. 2a-3a). In the process, Corporal Morrissette retrieved a glassine bag, discarded by Hughes, which contained eight "rocks" of crack cocaine. (App. 3a).

While booking Hughes at the police station, Corporal Morrissette completed a standard intake form. (*Id.*). This form is used by the Prince George's County Police Department when processing all arrestees and, in addition to seeking information about the arrestee's name, address, and telephone number and other matters, includes a section in which the officer is to ask whether the arrestee is a "narcotic or drug user." (*Id.*). If the arrestee answers yes to this question, the officer is to indicate on the form the type of narcotic or drug. (*Id.*). Hughes's answer to the drug use question was "no." (*Id.*).

Hughes was charged with possession with intent to distribute cocaine, conspiracy to distribute cocaine, and related offenses. At trial, the State sought to have Corporal Morrissette testify that Hughes had answered no to the drug use question to show that the cocaine found at

the time of Hughes's arrest was not intended for his personal use, but for distribution. (App. 3a; 39a-40a). Hughes objected that the response was inadmissible because it was elicited without benefit of *Miranda*[1] warnings, but the prosecutor argued that the question and answer came within the "routine booking question" exception to *Miranda*. (App. 39a-40a).

At the court's behest, the prosecutor elicited from Corporal Morrissette the circumstances under which the drug use question is generally asked. (App. 40a-41a). Corporal Morrissette testified that the question is asked of every arrestee, regardless of the charge, but added that he did not know why the question was on the form. (*Id.*). The trial court then reviewed the booking form, and noted: "It looks like a standard booking form arrest report from the police department for an adult." (App. 42a). The court then allowed Corporal Morrissette to testify that he had asked Hughes whether he was a narcotics or drug user, to which he responded that he was not. (App. 4a; 42a-43a).

The trial court later clarified why it had allowed the drug use question and answer. The court said that the drug use question sought to ascertain an arrestee's sobriety so as to assist officers in determining whether the arrestee has a drug problem requiring medication or isolation. (App. 48a).

The prosecutor addressed the issue in closing argument, saying:

> You also have a statement that was made during the booking process by the defendant that he

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[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

> doesn't use drugs. Well, you may consider that however you wish. You can ignore it totally if you want to, whatever you want to do, but I think that that is--you can take that into consideration. If he says he doesn't use drugs, then he presumptively didn't have this for his own personal use, he intended to do something with it, or if you decide that because he was being booked at that time that maybe he wasn't telling the whole story, that's fine, but even without that statement, you certainly have a quantity of drugs with the surrounding circumstances that indicate that he in fact intended to sell it or give it away.

(App. 4a).

Hughes was found guilty of all charges, (App. 2a), and appealed his convictions to the Court of Special Appeals of Maryland, which affirmed the trial court's ruling. That court took into account the facts that the question is asked of all persons arrested despite the reason for arrest and that the response to such question is relevant to whether an arrestee might require medical services or is an appropriate candidate for bail. (App. 32a-33a). From these facts the court concluded that the question was not asked to elicit an incriminating response; that it "was necessary to complete booking or pretrial services"; that the question thus came within the booking exception; and that the answer was admissible at Hughes's trial notwithstanding Corporal Morrissette's failure to give *Miranda* warnings. (App. 33a-34a).

The Court of Appeals of Maryland reversed. That court recognized the test outlined by a plurality of Justices in

Pennsylvania v. Muniz[2] for determining whether a question falls within the booking exception. (App. 13a). Nevertheless, the highest court in Maryland applied a pre-*Muniz* formulation, one based on language in *Rhode Island v. Innis*,[3] to analyze the drug use question at issue in this case. (*Id.*). Employing this *Innis*-based formulation, the court concluded that, given the nature of the crimes with which Hughes was charged, Corporal Morrissette reasonably should have known that Hughes's response to the drug use question would likely incriminate him. (App. 17a-19a). As such, the question amounted to interrogation and the failure to advise Hughes of his *Miranda* rights before posing the question rendered Hughes's answer inadmissible at trial. (App. 23a).

REASONS FOR GRANTING THE WRIT

This case presents the Court with an ideal vehicle for meeting three goals necessary to the development of confession law in this country, and review therefore is appropriate. As explained below, review of this case would allow the Court: first, to adopt the routine booking question exception to *Miranda v. Arizona*, 384 U.S. 436 (1966), which heretofore has been recognized by only four Justices of the Court; second, to resolve the confusion among the lower federal courts concerning the proper standard for determining whether a particular question comes within that exception to *Miranda*'s coverage; and third, to clarify that questions of the sort at issue in this

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[2] 496 U.S. 582 (1990).

[3] 446 U.S. 291 (1980).

case come within the exception. Because every person subjected to a custodial arrest undergoes a booking process, the public would be well served to have all three aspects of this frequently recurring issue resolved.

I.

A MAJORITY OF THE COURT HAS NOT YET ADOPTED AN EXCEPTION TO *MIRANDA* FOR ROUTINE QUESTIONS ASKED DURING THE BOOKING PROCESS.

This Court has twice signaled to the lower federal and state courts that there exists an exception to the protections of *Miranda v. Arizona* for routine questions that are asked as part of the booking process. In *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980), the Court held that "interrogation under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (*other than those normally attendant to arrest and custody*) that the police should know are reasonably likely to elicit an incriminating response from the suspect." (Emphasis supplied). More recently, Justice Brennan, writing for four members of the Court in *Pennsylvania v. Muniz*, 496 U.S. 436 (1990), stated that an arrestee's answers to questions that seek "biographical data necessary to complete booking or pretrial services," are "requested for record-keeping purposes only," and are "reasonably related to the police's administrative concerns" are exempted from the coverage of *Miranda*. *Id.* at 601-02 (plurality opinion). The imprimatur given the routine booking exception in *Muniz* did not command a majority

of the Court, however.[4] This case squarely presents the issue and thus affords the Court the chance to adopt an exception to the *Miranda* rule for routine booking questions.

II.

THE FEDERAL AND STATE COURTS ARE IN CONFLICT OVER THE PROPER STANDARD FOR DETERMINING WHETHER A QUESTION FALLS WITHIN THE ROUTINE BOOKING QUESTION EXCEPTION.

The Court's parenthetical in *Innis*, excluding from the definition of interrogation those questions "normally attendant to arrest and custody," has prompted the federal circuits and most (if not all) of the states to adopt in one form or another "a routine booking exception" to

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[4] Four other members of the Court in *Muniz* deemed it "unnecessary to determine whether the questions fall within the 'routine booking question exception' to *Miranda*," because they believed the defendant's responses "were not testimonial and do not warrant application of the privilege" to be free of compelled self-incrimination. 496 U.S. at 608 (Rehnquist, C.J., joined by White, Blackmun and Stevens, J.J., concurring in part and dissenting in part). Only Justice Marshall was of the view that Muniz's responses were inadmissible because they were obtained without benefit of *Miranda* warnings. *Id.* at 610-12 (Marshall, J., concurring in part and dissenting in part).

Miranda.[5] The courts have not been consistent, however,

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[5] *See, e.g.*, *United States v. Brown*, 101 F.3d 1272, 1274 (8th Cir. 1996); *United States v. Ventura*, 85 F.3d 708, 712 n.5 (1st Cir. 1996); *United States v. Bishop*, 66 F.3d 569, 572 n.2 (3d Cir.), *cert. denied*, 116 S. Ct. 681 (1995); *United States v. D'Anjou*, 16 F.3d 604, 608 (4th Cir.), *cert. denied*, 512 U.S. 1242 (1994); *United States v. Broadus*, 7 F.3d 460, 464 (6th Cir. 1993); *United States v. Parra*, 2 F.3d 1058, 1068 (10th Cir.), *cert. denied*, 510 U.S. 1026 (1993); *United States v. Henley*, 984 F.2d 1040, 1042 (9th Cir. 1993); *United States v. Montana*, 958 F.2d 516, 518 (2d Cir. 1992); *United States v. Webb*, 755 F.2d 382, 382-89 (5th Cir. 1985), *cert. denied*, 479 U.S. 1038 (1987); *Robinson v. Percy*, 738 F.2d 214, 218 (7th Cir. 1984); *United States v. Glen-Archila*, 677 F.2d 809, 815-16 (11th Cir.), *cert. denied*, 459 U.S. 874 (1982); *United States v. Hinckley*, 672 F.2d 115, 122-23 (D.C. Cir. 1982); *Mager v. State*, 836 S.W.2d 385, 386 (Ark. App. 1992); *People v. Bradford*, 929 P.2d 544, 562 (Cal. 1997); *State v. Evans*, 523 A.2d 1306, 1314 (Conn. 1987); *Allred v. State*, 622 So. 2d 984, 987 (Fla. 1993); *Franks v. State*, 486 S.E.2d 594, 597 (Ga. 1997); *State v. Blackshire*, 861 P.2d 736, 742 (Haw. App.), *cert. denied*, 863 P.2d 989 (Haw. 1993); *People v. Abdelmassih*, 577 N.E.2d 861, 864 (Ill. App. 1991); *Loving v. State*, 647 N.E.2d 1123, 1126 (Ind. 1995); *State v. Rossignol*, 627 A.2d 524, 526 (Me. 1993); *State v. Conover*, 537 A.2d 1167, 1170 (Md. 1988); *Commonwealth v. White*, 663 N.E.2d 834, 844-45 (Mass. 1996); *State v. Hale*, 453 N.W.2d 704, 707 (Minn. 1990); *Wesley v. State*, 521 So. 2d 1283, 1285-86 (Miss. 1988); *People v. Rodney*, 648 N.E.2d 471, 474 (N.Y. 1995); *State v. Geasley*, 619 N.E.2d 1086, 1089 (Ohio App. 1993); *Commonwealth v. Daniels*, 612 A.2d 395, 401 (Pa. 1992); *Wright v. Commonwealth*, 348 S.E.2d 9, 12 (Va. App. 1986); *State v. Wheeler*, 737 P.2d 1005, 1009 (Wash. 1987); *State v.*

in their approach to the issue.

Indeed, the Court's opinion in *Muniz* has not resolved the confusion among the courts concerning the proper method for evaluating when a question, asked during the booking process, requires that *Miranda* warnings be given before its answer can be admitted at trial. Notwithstanding that the plurality in *Muniz* set out a test for resolving any booking question issue, *see* 496 U.S. at 602 n.14, a number of federal and state courts continue to hew to a pre-*Muniz*, *Innis*-based formulation. These courts pose the test as whether the question at issue was reasonably likely to elicit an incriminating response given the context and the content of the question. Illustrative of this approach is *United States v. Montana*, 958 F.2d 516, 518 (2d Cir. 1992). *Accord People v. Rodney*, 648 N.E.2d 471, 474 (N.Y. 1995).

Some other courts, like the Court of Appeals of Maryland in this case, recognize a distinction between the *Muniz* formulation of "designed to elicit an incriminating response" and the *Innis*-based formulation of "reasonably likely to elicit an incriminating response," but nevertheless apply the *Innis*-type formulation to cases like the one at hand. For example, the Court of Appeals for the Tenth Circuit, in *United States v. Parra*, defined the booking exception in the language of *Muniz*, but applied the *Innis*-based formulation in determining that the particular question at issue came within the exception. 2 F.3d 1058, 1068 (10th Cir.), *cert. denied*, 510 U.S. 1026 (1993). The Court of Appeals for the Eighth Circuit has done likewise.

Stevens, 511 N.W.2d 591, 598-99 (Wis. 1994), *cert. denied*, 515 U.S. 1102 (1995).

See United States v. Brown, 101 F.3d 1272, 1274 (8th Cir. 1996) (citing *Muniz*, but stating, "Only if the government agent should reasonably be aware that the information sought, while merely for basic identification purposes in the usual case, is directly relevant to the substantive issue charged, will the question be subject to scrutiny."). The Court of Appeals for the First Circuit as well has noted, post-*Muniz*, that the applicable standard is *Innis*-based, albeit without referencing that decision. *United States v. Ventura*, 85 F.3d 708, 712 n.5 (1st Cir. 1996). And, the Court of Appeals for the Fourth Circuit, in *United States v. D'Anjou*, 16 F.3d 604 (4th Cir.), *cert. denied*, 512 U.S. 1242 (1994), cited, as if they were one and the same, the *Muniz* standard that excludes, as not within the exception, those questions, "even during booking, that are designed to elicit incriminating admissions," and the *Innis* standard that excludes questions "that the police should know are reasonably likely to elicit an incriminating response." *Id.* at 608.

The Court of Appeals for the Ninth Circuit has narrowly read the booking exception so as to exclude even those questions regarding identity, address or other routine background matters, if such questioning reasonably could have been expected to provide incriminating evidence and in fact does so. *See United States v. Henley*, 984 F.2d 1040, 1042-43 (9th Cir. 1993) (citing *Muniz*, but holding that asking arrestee if he owned car that linked him to other crimes did not come within booking exception because officer reasonably should have known the question was likely to elicit an incriminating response and such response did, in fact, incriminate the defendant); *see also United States v. Disla*, 805 F.2d 1340, 1346-47 (9th Cir. 1986) (rejecting, pre-*Muniz*, government's reliance on

the booking exception and holding that asking arrestee his place of residence, when police had preexisting knowledge that cocaine was stashed there, did not come within the booking exception).

The Sixth Circuit is of the view that the "particular susceptibility of the defendant" is relevant to whether particular questions should come within the exception. *United States v. Clark*, 982 F.2d 965, 968 (6th Cir. 1993). Still other courts believe that the nature of the charged offenses bears on the issue in the particular case. *E.g.*, *United States v. Disla*, 805 F.2d at 1347 (holding that police reasonably should have known that arrestee's answer to a booking question regarding his residence was likely to assist the prosecution in linking the arrestee to the premises where drugs were found); *accord United States v. Doe*, 878 F.2d 1546, 1550 (1st Cir. 1989) (question regarding arrestee's citizenship reasonably likely to link arrestee to violation of crime prohibiting a citizen of the United States on board any vessel from possessing drugs with intent to distribute them). The Eighth Circuit Court of Appeals appears to take the same approach. *See United States v. Brown*, 101 F.3d at 1274 (asking arrestee's name "was not directly relevant to the substantive offense, but wholly incidental").

Yet, other courts are of the view that, regardless of the potential use the prosecution may have for the information elicited during routine booking, the arrestee's answers to such questions as residence and employment are admissible under the booking exception. *E.g.*, *United States v. Booth*, 669 F.2d 1231, 1238-39 (9th Cir. 1981); *State v. Banks*, 370 S.E.2d 398, 402-03 (N.C. 1988) (defendant's answer to booking question that elicited his age was admissible at his trial on charges of child sexual

abuse, even though his age was an element of the offense).

With this case, the Court can resolve the confusion that currently prevails among the lower courts. At the same time, the Court can resolve whether the *Muniz* test is an objective one, or requires instead an examination of the subjective motives of the police in posing the question. The language of the *Muniz* standard implies that, if the police are motivated to obtain an incriminating admission, then any un-*Mirandized* answer will be unusable at trial. If, however, the questions "appear reasonably related to the police's administrative concerns," then the questions "fall outside the protections of *Miranda* and the answers thereto need not be suppressed." *Muniz*, 496 U.S. at 601-02. This Court's guidance is needed to resolve this related matter, as well.

III.

THIS CASE WAS WRONGLY DECIDED BY THE COURT BELOW BECAUSE THE DRUG USE QUESTION WAS ASKED FOR AN ADMINISTRATIVE PURPOSE UNRELATED TO CRIMINAL INVESTIGATION.

This is a particularly appropriate case for setting the contours of the routine booking question exception because the question at issue lay beyond the core "biographical data"-related questions that were at issue in *Muniz*. To be sure, the drug use question asked in this case solicits information beyond the arrestee's name, address, age and place of employment and marital status. Nevertheless, as posed in this case, the drug use question

qualifies as a "routine booking question," and the Court of Appeals of Maryland was wrong in concluding otherwise.

There are at least two reasons why the police, wholly apart from investigating crime, would want to ascertain an arrestee's drug use status: First, any police agency must take reasonable steps to ensure the inmates' safety during confinement. Part of this responsibility must include necessary medical treatment and prevention of physical harm to the arrestees themselves and others with whom they come into contact. Knowledge of an arrestee's potential for illness or violence as the result of drug withdrawal is necessary to carry out that custodial responsibility. Second, it is in the department's interest to determine whether an arrestee is capable of being interrogated. Certainly, an arrestee's status as a drug user—in particular, whether he is presently intoxicated or likely to go into withdrawal—bears on the voluntariness of any confession the police might obtain.

The trial court found in this case that the drug use question was reasonably related to these administrative concerns. The question fell within the booking exception, and any answer would therefore be admissible at trial without the necessity of *Miranda* warnings and waiver.

CONCLUSION

For the foregoing reasons, the State of Maryland respectfully requests that the petition for certiorari be granted.

Respectfully submitted,

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September 12, 1997

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APPENDIX A:

Reported opinion of the Court of Appeals of Maryland, *Hughes v. State*, 346 Md. 80, 695 A.2d 132 (1997) 1a

APPENDIX B:

Unreported opinion of the Court of Special Appeals of Maryland, *Michael Patron Hughes v. State of Maryland*, No. 808, Sept. Term, 1995 (filed March 27, 1996) 24a

APPENDIX C::

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APPENDIX A

Court of Appeals of Maryland.

No. 60, Sept. Term, 1996.

MICHAEL PATRON HUGHES

v

STATE OF MARYLAND.

June 17, 1997.

Argued before BELL, C.J., and ELDRIDGE, RODOWSKY, CHASANOW, KARWACKI, RAKER and WILNER JJ.

CHASANOW, Judge.

We are called upon in this case to examine the validity and scope of what is commonly known as the "routine booking question" exception to the requirements of *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). The precise issue before the Court is whether the "routine booking question" exception encompasses a question on an arrest intake form as to whether the arrestee is a "narcotics or drug user." For the reasons set forth below, we conclude that it does not.

Accordingly, the admission of testimony regarding the arrestee's response, absent *Miranda* warnings, to this question was error and requires reversal of the judgment below.

I.

The petitioner, Michael Patron Hughes, was arrested on October 14, 1993, for his suspected involvement in the distribution of illegal drugs. He was subsequently charged with possession with intent to distribute cocaine, possession of cocaine, conspiracy to distribute cocaine and conspiracy to possess with intent to distribute cocaine. The petitioner was tried by jury in the Circuit Court for Prince George's County, which resulted in a verdict of guilty on all charges.

At trial, Corporal David Morrissette of the Prince George's County Police Department described the events leading up to the petitioner's arrest. He testified that the petitioner was arrested in connection with a narcotics distribution surveillance operation on Warner Avenue in Landover Hills. The operation consisted of two plain-clothed police officers, who scanned the area for illegal drug activity, and approximately 15 uniformed officers, who stood by to apprehend offenders if any such activity were observed.

Upon receiving a radio communication from the surveillance officers that they had indeed witnessed a series of apparent drug transactions, Corporal Morrissette and other uniformed officers proceeded to the target location. As the officers approached, a group of three to four individuals, one of whom was the petitioner, dispersed and fled the area. Corporal Morrissette pursued

and ultimately apprehended the petitioner. During the course of the pursuit, the petitioner discarded an item, which later was determined to be a glassine bag containing approximately eight rocks of crack cocaine. Corporal Morrissette also discovered in the petitioner's possession a pager and $62.00 in mostly small bills.

During post-arrest processing, Corporal Morrissette completed a standard Prince George's County Police Department arrest report. In addition to such biographical information as the arrestee's name, address, and telephone number, the arrest form contains a section in which the officer is to indicate whether the arrestee is a "narcotic or drug user." If the arrestee answers this question in the affirmative, the officer is to indicate the "type" of narcotic or drug. The petitioner, however, answered this question in the negative.

At trial, the prosecutor sought to have Corporal Morrissette testify as to the petitioner's negative response to the "narcotics or drug" use question. Defense counsel objected on the ground that the petitioner had not yet been advised of his *Miranda* rights at that time, and that the response to the question was thus inadmissible. The prosecutor countered that the question was exempt from *Miranda* under the routine booking question exception. After much discussion, the trial judge permitted the following testimony:

> "[STATE'S ATTORNEY]: Corporal Morrissette, I'm showing you what has been marked as State's Exhibit No. 4, and what is that document, just for the record?
>
> [MORRISSETTE]: Prince George's County Police Department arrest report.
>
> [STATE'S ATTORNEY]: And who filled that

document out?
[MORRISSETTE]: I did.
[STATE'S ATTORNEY]: And on Question No. 18, which is part of the preprinted booking information, did you ask the defendant whether or not he was a narcotics or drug user?
[MORRISSETTE]: Yes.
[STATE'S ATTORNEY]: And what was his response?
[MORRISSETTE]: No, he was not."

The prosecutor later used the petitioner's response that he was not a drug user to support the charge that the petitioner intended to distribute, as opposed to consume, the cocaine in his possession. In closing argument, the prosecutor urged the jury to consider the significance of the defendant's response as follows:

"You also have a statement that was made during the booking process by the defendant that he doesn't use drugs. Well, you may consider that however you wish. You can ignore it totally if you want to, whatever you want to do, but I think that that is—you can take that into consideration. If he says he doesn't use drugs, then he presumptively didn't have this for his own personal use, he intended to do something with it, or if you decide that because he was being booked at that time that maybe he wasn't telling the whole story, that's fine, but even without that statement, you certainly have a quantity of drugs with the surrounding circumstances that indicate that he in fact intended to sell it or give it away."

On appeal of his convictions to the Court of Special Appeals, the petitioner asserted that the trial court erred in

permitting Officer Morrissette to testify regarding the negative response to the drug use question on the arrest intake form.[1] The intermediate appellate court held that the question fell within the routine booking question exception to *Miranda*, and it found no error by the trial judge in admitting the testimony.

II.

A.

In *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), the Supreme Court concluded that proper protection of the privilege against self-incrimination requires the adoption of certain procedural safeguards in the context of custodial interrogation. Specifically, the Court held that an individual in police custody must be warned, prior to any interrogation, "that he has the right to remain silent, that anything he says can be used against him in a court of law, [and] that he has the right to the presence of an attorney," either retained or appointed. *Miranda*, 384 U.S. at 479, 86 S.Ct. at 1630, 16 L.Ed.2d at 726. Absent a knowing and voluntary waiver of these rights, any incriminating responses to police questioning are inadmissible against the detained individual at subsequent criminal proceedings. *Id.*

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[1] The petitioner also argued that there was insufficient evidence to support the convictions for conspiracy to distribute cocaine and conspiracy to possess with intent to distribute cocaine. The Court of Special Appeals rejected that argument, and the issue is not now before this Court.

The obligation to give *Miranda* warnings arises whenever an individual is subjected to "custodial interrogation." *See Vines v. State*, 285 Md. 369, 374, 402 A.2d 900, 903 (1979)(observing that "in order to be subject to the *Miranda* warnings, statements must flow from a 'custodial interrogation' within the meaning of *Miranda* "). In the years since this landmark decision, however, a number of exceptions to *Miranda*'s requirements have been recognized. *See, e.g., New York v. Quarles*, 467 U.S. 649, 104 S.Ct. 2626, 81 L.Ed.2d 550 (1984)(public safety exception).

One such exception to *Miranda*'s requirements is referenced by the Supreme Court in *Pennsylvania v. Muniz*, 496 U.S. 582, 110 S.Ct. 2638, 110 L.Ed.2d 528 (1990). It is known as the routine booking question exception. At issue in *Muniz* was a series of questions posed, without *Miranda* warnings, to one Inocencio Muniz who was arrested on suspicion of driving while intoxicated. *Muniz*, 496 U.S. at 585, 110 S.Ct. at 2642, 110 L.Ed.2d at 541. In accordance with standard police procedure, the arresting officer asked Muniz his name, address, height, weight, eye color, age, and date of birth. The officer also asked Muniz if he knew the date of his sixth birthday, to which Muniz responded that he did not. *Muniz*, 496 U.S. at 586, 110 S.Ct. at 2642, 110 L.Ed.2d at 542. The responses to these questions were captured on a video tape, which was later admitted into evidence at trial. *Muniz*, 496 U.S. at 585-87, 110 S.Ct. at 2642, 110 L.Ed.2d at 541-42. On appeal of his conviction, Muniz asserted, among other things, that admission of the video tape violated *Miranda* and the privilege against self-incrimination.

The Supreme Court agreed that the question concerning

the date of the suspect's sixth birthday should have been suppressed because of its incriminating content. *Muniz*, 496 U.S. at 600, 110 S.Ct. at 2649, 110 L.Ed.2d at 551. The Court explained that "[t]he content of his truthful answer supported an inference that his mental faculties were impaired" because "the trier of fact might reasonably have expected a lucid person to [be able to] provide" that date. *Muniz*, 496 U.S. at 599, 110 S.Ct. at 2649, 110 L.Ed.2d at 550. The suspect's response to that question, therefore, should have been suppressed.

More importantly for our purposes in the instant case, a plurality of the *Muniz* Court further agreed that responses to the first seven questions (*i.e.*, name, address, height, weight, eye color, age, and date of birth) fell within a "routine booking question" exception to *Miranda*. This exception "exempts from Miranda's coverage questions to secure the ' "biographical data necessary to complete booking or pretrial services." ' " *Muniz*, 496 U.S. at 601, 110 S.Ct. at 2650, 110 L.Ed.2d at 552 (quoting Brief for U.S. as *Amicus Curiae* at 12, in turn quoting *United States v. Horton*, 873 F.2d 180, 181 n. 2 (8th Cir.1989)). As the Court explained:

> "The state court found that the first seven questions were 'requested for record-keeping purposes only,' ... and therefore the questions appear reasonably related to the police's administrative concerns. *In this context*, therefore, the first seven questions asked at the Booking Center fall outside the protections of *Miranda* and the answers thereto need not be suppressed." (Footnote omitted)(emphasis added).

Muniz, 496 U.S. at 601-02, 110 S.Ct. at 2650, 110 L.Ed.2d

at 552. The Supreme Court emphasized, however, that not every question asked during the booking process necessarily falls within the routine booking question exception. *See Muniz*, 496 U.S. at 602 n. 14, 110 S.Ct. at 2650 n. 14, 110 L.Ed.2d at 552 n. 14. Quoting with approval an excerpt from an *amicus* brief, the Court stated:

> "Recognizing a "booking exception" to *Miranda* does not mean, of course, that any question asked during the booking process falls within that exception. Without obtaining a waiver of the suspect's *Miranda* rights, the police may not ask questions, even during booking, *that are designed to elicit incriminating admissions*.' " (Emphasis added).

Id. (quoting Brief for U.S. as *Amicus Curiae* at 13). The *Muniz* decision thus suggests that routine booking questions regarding the arrestee's name, address, height, weight, eye color, date of birth, and current age, which are aimed at securing "biographical data necessary to complete booking or pretrial services," and which are asked in that context are exempt from the requirements of *Miranda*, unless they are "designed to elicit incriminating admissions."

Only four Justices joined in the portion of the *Muniz* opinion, however, that carved out this exception to *Miranda*. In a dissenting opinion, Justice Marshall criticized the plurality's recognition of the routine booking question exception, stating that "[e]ven if a routine booking question exception to *Miranda* were warranted, that exception should not extend to any booking question that the police should know is reasonably likely to elicit an incriminating response, *regardless of whether the question is 'designed' to elicit an incriminating response*. ..." *See*

Muniz, 496 U.S. at 610-11, 110 S.Ct. at 2655, 110 L.Ed.2d at 558 (Marshall, J., dissenting) (citation omitted) (emphasis added). Justice Marshall further explained: "Although the police's intent to obtain an incriminating response is relevant to [the] inquiry, the key components of the analysis are the nature of the questioning, the attendant circumstances, and the perceptions of the suspect. Accordingly, *Miranda* warnings are required before the police may engage in any questioning reasonably likely to elicit an incriminating response." *Id.* (citation omitted). The remaining four Justices found it "unnecessary" to examine the applicability of the booking question exception defined by the plurality because, in their view, "Muniz's responses to the videotaped 'booking' questions were not testimonial and do not warrant application of the [Fifth Amendment] privilege." *Muniz*, 496 U.S. at 608, 110 S.Ct. at 2654, 110 L.Ed.2d at 556 (Rehnquist, C. J., concurring in the result). Hence, while the *Muniz* decision indicates that some members of the Supreme Court supported a routine booking question exception, the opinion does not reflect a consensus of the Court as to the scope of that exception.

B.

Prior to the *Muniz* decision, a routine booking question exception to *Miranda* had gained widespread acceptance among lower courts. *See, e.g., U.S. v. Doe*, 878 F.2d 1546 (1st Cir.1989); *United States v. Morrow*, 731 F.2d 233 (4th Cir.), *cert. denied*, 467 U.S. 1230, 104 S.Ct. 2689, 81 L.Ed.2d 883 (1984); *United States v. Avery*, 717 F.2d 1020 (6th Cir.1983), *cert. denied*, 466 U.S. 905, 104 S.Ct. 1683, 80 L.Ed.2d 157 (1984); *United States v.*

McLaughlin, 777 F.2d 388 (8th Cir.1985); *United States v. Disla*, 805 F.2d 1340 (9th Cir.1986); *United States v. Glen-Archila*, 677 F.2d 809 (11th Cir.), *cert. denied*, 459 U.S. 874, 103 S.Ct. 165, 74 L.Ed.2d 137 (1982). The justification for the exception was that an arrestee is not subjected to the coercive atmosphere of custodial interrogation that *Miranda* was intended to prevent when he or she is asked a question that is not intended to elicit an incriminating response. *See Mills v. State*, 278 Md. 262, 268, 363 A.2d 491, 494 (1976)(and cases cited therein); *see also Com. v. Kacavich*, 28 Mass.App.Ct. 941, 550 N.E.2d 397, 397 (1990)(stating that "routine booking inquiries ... are not interrogation within the meaning of the *Miranda* rule"). That is to say, because booking questions generally are not designed to evoke incriminating answers, courts reasoned that they do not rise to the level of "interrogation," as contemplated by the Supreme Court in *Miranda*. In Maryland, the Court of Special Appeals has applied this reasoning to uphold the validity of questions regarding a suspect's name, address, and place of employment. *See Clarke v. State*, 3 Md.App. 447, 451, 240 A.2d 291, 294 (1968)(stating that these questions "were not intended to elicit answers which would incriminate the Appellant"); *Propst, May & May v. State*, 5 Md.App. 36, 43, 245 A.2d 88, 92 (1968)(upholding validity of question about address and stating that "we do not think that routine booking procedures are the kind of interrogation covered by *Miranda* in the absence of unusual circumstances...."); *Grimes v. State*, 44 Md.App. 580, 586, 409 A.2d 767, 771 (1980)(relying on *Clarke* and *Propst* to uphold question about name), *rev'd on other grounds*, 290 Md. 236, 429 A.2d 228 (1981); *Ferrell v. State*, 73 Md.App. 627, 640,

536 A.2d 99, 105 (1988)(relying on *Grimes* and stating that "routine questions seeking a person's name and address are not proscribed by *Miranda*. ..."), *rev'd on other grounds*, 318 Md. 235, 567 A.2d 937 (1990).

The Supreme Court's decision in 1980 in *Rhode Island v. Innis*, 446 U.S. 291, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980), however, prompted a subtle change in the application of the booking question exception. In *Innis*, the Supreme Court held that "interrogation" for purposes of *Miranda* is "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are *reasonably likely to elicit an incriminating response* from the suspect." *Innis*, 446 U.S. at 301, 100 S.Ct. at 1689-90, 64 L.Ed.2d at 308 (emphasis added)(footnote omitted). The notion that a question "normally attendant to arrest and custody" may also be "reasonably likely to elicit an incriminating response" appears not to have been contemplated by the *Innis* Court. Lower courts, nevertheless, have interpreted *Innis* to mean that the routine booking question exception does not apply if a police officer knows, or should know, that a routine booking question, although innocuous on its face, is reasonably likely to evoke an incriminating answer. *See, e.g.*, *Disla*, 805 F.2d at 1347 (stating that the "officer ... should have known that the question regarding [the suspect's] residence was reasonably likely to elicit an incriminating response" and "[i]n light of both the context of the questioning and the content of the question ... Disla was subjected to interrogation"); *United States v. Mata-Abundiz*, 717 F.2d 1277, 1280 (9th Cir.1983)(stating that "[i]f ... the questions are reasonably likely to elicit an incriminating response in a particular situation, the

exception does not apply"). Under this standard, courts have held that *Miranda* warnings should have preceded questions concerning such topics as an arrestee's citizenship, *see Mata-Abundiz*, 717 F.2d at 1280 and *Doe*, 878 F.2d at 1551; residence, *see Disla*, 805 F.2d at 1347 (but failure to suppress held to be harmless error); and name, *see U.S. v. Parra*, 2 F.3d 1058, 1068 (10th Cir.)(but failure to suppress held to be harmless error), *cert. denied*, 510 U.S. 1026, 114 S.Ct. 639, 126 L.Ed.2d 597 (1993). *But see U.S. v. Broadus*, 7 F.3d 460, 464 (6th Cir.1993)(no indication that police should have known that routine question about telephone number was likely to elicit incriminating information); *People v. Rodney*, 85 N.Y.2d 289, 624 N.Y.S.2d 95, 98, 648 N.E.2d 471, 474 (1995)(question about occupation not reasonably likely to elicit an incriminating response).

C.

Interestingly, the *Muniz* plurality did not acknowledge, in its discussion of the routine booking question exception, the limitation derived from *Innis* that lower courts had adopted. The standard set forth by the plurality, rather, was that questions asked during booking that are aimed at gathering biographical information for record-keeping purposes are exempt from *Miranda*; the express limitation on this rule is that the police may not ask questions, under the guise of routine booking questions, that are "designed to elicit incriminating admissions."[2] The *Innis*-based

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[2] The plurality expressly rejected the test suggested by the State, however, that questions that are "not intended to

formulation, in contrast, recognizes an exemption for routine booking questions, but prohibits police from posing, absent *Miranda* warnings, any questions that the police know or should know are "reasonably likely to elicit an incriminating response." The difference between the two standards is that the former limits the scope of the booking question exception based solely on the actual intent of the police officer in posing the question, while the latter restricts the exception based on an objective assessment of the likelihood, in light of both the context of the questioning and the content of the question, that the question will elicit an incriminating response.

The distinction between the two standards has gone largely unremarked upon in post-*Muniz* discussions of the routine booking question exception. *See, e.g.*, DAVID M. NISSMAN AND ED HAGEN, LAW OF CONFESSIONS § 5.13 at 5-22 (2d ed.1994)(stating, without qualification, that "[t]he [routine booking question] exception was formally adopted by the *United States Supreme Court in Pennsylvania v[.] Muniz* "); WAYNE R. LAFAVE AND JEROLD H. ISRAEL, CRIMINAL PROCEDURE § 6.7 at 327 (2d ed.1992)(stating that *Muniz* supports lower court

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elicit information for investigatory purposes" do not constitute "interrogation" under *Innis*. The court explained: "[T]he *Innis* test focuses primarily upon 'the perspective of the suspect.' " *Pennsylvania v. Muniz*, 496 U.S. 582, 601, 110 S.Ct. 2638, 2650, 110 L.Ed.2d 528, 552 (1990)(quoting *Illinois v. Perkins*, 496 U.S. 292, 296, 110 S.Ct. 2394, 2397, 110 L.Ed.2d 243, 251 (1990)). This explanation appears to be merely a comment upon the proper formulation of the *Innis* test, rather than a tacit approval of the *Innis*-based formulations of the routine booking question exception.

decisions, based on the definition of interrogation in *Innis*, that routine booking questions do not require *Miranda* warnings, but offering no discussion of the limits of the exception); *see also Broadus*, 7 F.3d at 460 (*Muniz* not mentioned in decision). Some courts, in fact, have defined the routine booking question exception in the language of *Muniz*, but have then employed the *Innis*-based standard as if the two formulations were interchangeable. For example, in *Parra, supra*, the court wrote:

> "[W]here questions regarding normally routine biographical information are *designed to elicit incriminating information*, the questioning constitutes interrogation subject to the strictures of *Miranda*. In this case, [the law enforcement officer] did not question [the suspect] to obtain general booking information. Rather, he questioned [the suspect] about his true name for the direct and admitted purpose of linking [the suspect] to his incriminating immigration file. Under these circumstances, the questioning was *reasonably likely to elicit incriminating information* relevant to establishing an essential element necessary for a conviction...." (Citation omitted)(emphasis added).

2 F.3d at 1068. Similarly disregarding the distinction, the court in *People v. Rodney, supra*, cited *Muniz* in support of the statement that the routine booking question exception does not apply "if the questions, though facially appropriate, are *likely* to elicit incriminating admissions...." 624 N.Y.S.2d at 98, 648 N.E.2d at 474 (emphasis added). Contributing to the lack of attention given the slight, but significant, difference in tests may be the fact that the *Muniz* plurality did not expressly reject

the *Innis*-based decisions, and may also be the perception that the two approaches are not necessarily irreconcilable. The Fourth Circuit Court of Appeals, for example, has referred to courts that use the *Innis*-based formulation as merely "elaborat[ing] upon the booking [question] exception" as defined in *Muniz*. *U.S. v. D'Anjou*, 16 F.3d 604, 608 (4th Cir.1994). In its review of the instant case, however, the Court of Special Appeals seemed to reject the *Innis*-based test and instead concluded that the principle "established" by *Muniz* was that "the booking exception applies to routine questions ... unless they are *asked for the purpose* of obtaining incriminating answers." (Emphasis added). Using this formulation of the routine booking question exception, the intermediate appellate court held the question was within the routine booking exception. We disagree.

III.

We agree that certain routine questions asked during the booking process are ordinarily exempt from the requirements of *Miranda*. *See State v. Conover*, 312 Md. 33, 39, 537 A.2d 1167, 1170 (1988)(stating that " '[t]here seems to be general agreement ... that *Miranda* does not apply to "administrative questioning," the routine questions asked of all arrestees who are "booked" or otherwise processed' ")(quoting *Vines*, 285 Md. at 376, 402 A.2d at 904). In order for this exception to apply, however, the questions must be directed toward securing "simple identification information of the most basic sort;" that is to say, only questions aimed at accumulating "basic identifying data required for booking and arraignment" fall within this exception. *United States ex rel. Hines v.*

LaVallee, 521 F.2d 1109, 1113 & n. 2. (2d Cir.1975), *cert. denied sub nom., Hines v. Bombard*, 423 U.S. 1090, 96 S.Ct. 884, 47 L.Ed.2d 101 (1976). Examples of questions to which the routine booking question exception will ordinarily extend include the suspect's name, address, telephone number, age, date of birth, and similar such pedigree information.

Conversely, questions that are "designed to elicit incriminatory admissions" do not fall within the narrow routine booking question exception. *Muniz*, 496 U.S. at 602 n. 14, 110 S.Ct. at 2650 n. 14, 110 L.Ed.2d at 552 n. 14. In some instances, it is plain from the nature of the question whether it is aimed at merely gathering pedigree information for record-keeping purposes, or whether it is directed at procuring statements by the suspect that, either in isolation or in connection with other known facts, will tend to prove the suspect's guilt. The question in *Muniz* regarding the date of the suspect's sixth birthday falls within the latter category, as does inquiry into such obviously incriminating areas a whether or why a suspect committed a criminal act.

Even if a question appears innocuous on its face, however, it may be beyond the scope of the routine booking question exception if the officer knows or should know that the question is reasonably likely to elicit an incriminating response. Assessment of the likelihood that an otherwise routine question will evoke an incriminating response requires consideration of the totality of the circumstances in each case, with consideration given to the context in which the question is asked. The fact that the *answer* to a booking question assists the prosecution in proving its case is not determinative of whether a standard booking *question*, when posed, was *likely* to elicit an

incriminating response. A benign question in one case may amount to "interrogation," for which *Miranda* warnings are required, in another case. Therefore, "courts should carefully scrutinize the factual setting of each encounter of this type," *Avery*, 717 F.2d at 1025, keeping in mind that the critical inquiry is whether the police officer, based on the totality of the circumstances, knew or should have known that the question was reasonably likely to elicit an incriminating response. *Avery*, 717 F.2d at 1024; *see also Parra*, 2 F.3d at 1068 (finding immigration agent's question as to suspect's identity was "interrogation" for purposes of *Miranda* in that it linked suspect to incriminating immigration file, but concluding that the error was harmless).

We also note that where a purportedly routine booking question provides some proof of an element of the crime for which the suspect is arrested, the booking question exception will be less likely to apply. Stated otherwise, "[t]he closer the connection between the crime in question and the information sought, the stronger the inference that the [police officer] should have known that [the] inquiry was 'reasonably likely to elicit an incriminating response from the suspect.'" *United States v. Minkowitz*, 889 F.Supp. 624, 628 (E.D.N.Y.1995)(quoting *Muniz*, 496 U.S. at 601, 110 S.Ct. at 2650, 110 L.Ed.2d at 551). For example, in *United States v. Disla, supra*, the Ninth Circuit Court of Appeals held that the questioning as to the defendant's residence amounted to interrogation for purposes of *Miranda* where the police officer knew that drugs earlier had been found at a particular address and where the inquiry was made at the scene of the arrest, not in a routine booking setting. The court explained:

"The facts here indicate that officer Zamora

> should have known that the question regarding Disla's residence was reasonably likely to elicit an incriminating response. Zamora knew that a large quantity of cocaine and cash had been found at the Anita Street apartment and that the resident(s) of the apartment had not been identified. After the cocaine and cash were discovered, Zamora asked neighbors for a description of the persons who lived at the apartment and observed Disla and his brother approach the apartment building. * * * [T]he question as to where Disla lived was related to an element (possession) of the crime that Zamora had reason to suspect Disla committed."

Disla, 805 F.2d at 1347.

In *United States v. Doe, supra*, the court reached a similar conclusion with regard to a query as to the appellants' citizenship. After being rescued by the Coast Guard from a burning ship, the appellants in *Doe* were handcuffed and chained to the deck of the Coast Guard vessel. *Doe*, 878 F.2d at 1550. A Coast Guard officer then asked each appellant his or her name and citizenship; each individual responded that he or she was an American citizen. *Id.* Although a question about citizenship may be a permissible booking question in some contexts, the circumstances in that case were such that the exception did not apply. The appellants were convicted under a statute that "makes it a crime 'for *a citizen of the United States* on board *any* vessel' to possess drugs with [the] intent to distribute them." *Id.* (quoting 21 U.S.C. § 955a(b)(1980)(emphasis in *Doe*)). The court thus concluded:

> "[Q]uestions about citizenship, asked on the high

> seas, of a person present on a *foreign* vessel with drugs aboard, would (in our view) seem 'reasonably likely to elicit an incriminating response.' *United States v. Mata-Abundiz*, [717 F.2d 1277 (9th Cir.1983)]. When, or whether, the United States can prosecute a person found on such a ship is not immediately obvious; and the possibility that prosecution will turn upon citizenship is great enough ... that Coast Guard officers ought to know that answers to such questions may incriminate." (Emphasis in original).

Doe, 878 F.2d at 1551-52. The location of the questioning, along with the nature of the crime of which the arrestee is suspected, therefore, has some bearing on whether a particular question constitutes interrogation, for which *Miranda* warnings are a prerequisite.

IV.

Applying the above principles to the instant case, we conclude that the question as to the petitioner's "narcotics or drug use" does not fall within the routine booking question exception to *Miranda*. The State argues that the question qualifies as a routine booking question because it is contained on a standard booking form; it is asked of every arrestee, regardless of the charge; and it is asked for reasons "wholly apart from investigating crime."

The State's argument is flawed in several respects. First, the mere fact that a question is asked during booking does not mean that it necessarily falls within the booking question exception. The police may not use the booking process as a pretext for gathering incriminating

information. *Muniz*, 496 U.S. at 602 n. 14, 110 S.Ct. at 2650 n. 14, 110 L.Ed.2d at 552 n. 14; *see United States v. Hinckley*, 672 F.2d 115, 125 (D.C.Cir.1982)("Thus, where the mental state of an arrestee looms as a likely issue, we can only conclude that a systematic, 25-minute 'background' interview was designed to elicit 'incriminating' responses...."). Therefore, the inclusion of this question on a standard booking form is not necessarily determinative. We noticed that the Prince George's County Police Department arrest report also contains an area in which the officer is to list the names of any "accomplices" in the suspected criminal activity. Surely, the State would not argue that inquiring as to a suspect's confederates in crime amounts to a routine booking question, yet this question is nevertheless included on the arrest report.

In addition, as explained in section III above, a seemingly benign question may be reasonably likely to evoke a self-incriminating response in certain circumstances. Hence, that the drug use question is asked of every arrestee is similarly not dispositive. The totality of the circumstances determines whether a question is reasonably likely to elicit an incriminating response. Where an individual is arrested on drug charges, as was the petitioner, most questions about drug use seem particularly likely to call for an incriminating response. *See Nasiriddin v. State*, 16 Md.App. 479, 500-01, 298 A.2d 490, 502-03 (*Miranda* precluded question as to whether suspect had a drug problem where officer knew that drug paraphernalia had been found in suspect's vehicle), *cert. denied*, 414 U.S. 1028, 94 S.Ct. 458, 38 L.Ed.2d 321 (1973). In the instant case, Officer Morrissette knew that the petitioner had been arrested in

connection with a narcotics distribution surveillance operation. The petitioner's negative response to the drug use question was thus inculpatory in that it supported the charge that he intended to distribute, as opposed to consume, the cocaine. Answering the question in the affirmative, however, would have amounted to an admission that he engages in criminal behavior. Regardless of the officer's intent in asking the question, therefore, the question was more than reasonably likely to evoke an incriminating response; it was almost certain to do so.

The State also asserts that the question is a valid means of redressing certain administrative concerns; namely, that (1) knowledge of the potential of illness or violence resulting from drug withdrawal will enable the police to provide necessary medical treatment to the suspect, and to protect others from harm; and that (2) the information is helpful because the fact that a suspect is under the influence of drugs may affect the voluntariness of any confession procured. The intermediate appellate court agreed that the drug use question is "relevant to whether an arrestee might need medical services." There is nothing in the record to suggest, however, that the petitioner might have been under the influence of "narcotics or drugs" or that he otherwise might have been in need of medical services.

Furthermore, if the police department is concerned about violence or illness resulting from drug use or other such concerns, the appropriate question would appear to be whether the suspect is *currently under the influence of* any narcotics or drugs, as opposed to whether the suspect is generally a narcotics or drug user. It would also seem advisable to inquire as to whether the suspect is taking any

prescription medication that might similarly affect the well-being of the suspect or those around him, rather than restrict the inquiry to narcotics or drugs.

We do not mean to suggest that any particular modification of the question would necessarily fall within the routine booking question exception, but we wish to point out that a question directed toward the present physical state of the suspect seems better-suited to redress the "administrative concerns" cited by the State. Such questions are, moreover, in keeping with the questions at issue in *State v. Geasley*, 85 Ohio App.3d 360, 619 N.E.2d 1086 (1993), the case upon which the Court of Special Appeals relied in concluding that the routine booking question exception applied in the instant case. In *Geasley*, the court held that "asking an arrestee whether he has recently seen a physician, is taking medication, or has any medical condition requiring special treatment is a legitimate police concern when booking a suspect." *Geasley*, 619 N.E.2d at 1093. The court did not address the validity of a question about general narcotics or drug use.

V.

In sum, we conclude that certain routine questions asked during the booking process are ordinarily exempt from the requirements of *Miranda*. The routine booking question exception, however, does not encompass questions that are designed to elicit incriminating admissions. In order to determine whether a particular question is designed to, or reasonably likely to, elicit an incriminating response, the court must consider the totality of the circumstances, including the context of the questioning and the content of

the question. An incriminating *answer* does not mean an otherwise standard booking *question* was reasonably likely to elicit an incriminating response. The intent of the police officer in posing the question may be relevant to a determination of the applicability of the exception, but it does not control. *Doe*, 878 F.2d at 1551 (observing that "[t]he question is an objective one; the officer's *actual* belief or intent is relevant, but it is not conclusive") (emphasis in original); *Disla*, 805 F.2d at 1347 (stating that "[t]he officer's intent ... is relevant, but not decisive").

Notwithstanding our decision to recognize a routine booking question exception to *Miranda*, we hold that the question at issue in the instant case as to whether the arrestee is a "narcotics or drug user" does not fall within the scope of that exception. Particularly where, as here, an individual is arrested for suspected involvement in the distribution of illegal drugs, this question is reasonably likely to elicit an incriminating response. The petitioner's negative response to the question thus should have been suppressed, and the trial judge's admission of testimony concerning that answer amounts to error. For these reasons, we reverse the judgment of the intermediate appellate court.

JUDGMENT OF THE COURT OF SPECIAL APPEALS REVERSED. CASE REMANDED TO THAT COURT WITH INSTRUCTIONS TO REVERSE THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AND REMAND THIS CASE TO THAT COURT FOR A NEW TRIAL. COSTS IN THIS COURT AND IN THE COURT OF SPECIAL APPEALS TO BE PAID BY PRINCE GEORGE'S COUNTY.

APPENDIX B

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 808

September Term, 1995

MICHAEL PATRON HUGHES

v.

STATE OF MARYLAND

Wenner,
Davis,
Murphy,

JJ.

Per Curiam

Filed: March 27, 1996

Appellant, Michael Patron Hughes, was convicted by a jury in the Circuit Court for Prince George's County of possession of cocaine, possession with intent to distribute cocaine, conspiracy to possess cocaine, and conspiracy to possess with intent to distribute cocaine. He was sentenced to concurrent terms of twenty years of imprisonment with all but ten years suspended on the conviction for possession with intent to distribute cocaine, and twenty years of imprisonment with all but ten years suspended on the conviction for conspiracy to possess with intent to distribute cocaine. The remaining counts were merged for the purpose of sentencing. On appeal, appellant presents us with two questions:

I. Did the trial court err in permitting testimony regarding appellant's answer to a question on the police intake report?

II. Was the evidence insufficient to support the convictions for conspiracy to distribute cocaine and conspiracy to possess with intent to distribute cocaine?

We will answer both questions in the negative, and affirm the judgments of the circuit court.

FACTS

On the evening of 14 October 1993, Corporal Fox and Corporal Michael of the Prince George's County Police Department were surveilling Warner Avenue in Landover Hills, because of a large number of complaints of drug activity in the area. Anticipating drug activity there, Fox

and Michael were focusing on an area on a hill behind an apartment complex. An arresting team of uniformed officers was stationed nearby.

Corporal Fox testified that he and Corporal Michael had observed a group of five men on the hill for a period of twenty or twenty-five minutes. During that time, they had observed three or four people enter the area, approach one of the group, and then leave the area. Fox and Michael also observed an individual who appeared to be acting as a lookout. It appeared to the officers that the group was selling drugs.

Corporal Fox radioed the arrest team to approach the area. As they did so, the five men ran from the area. One of them was appellant. Appellant was pursued by Corporal Morrissette, one of the uniformed officers, who observed appellant discarding something. Corporal Morrissette apprehended appellant and retrieved the item discarded by appellant. According to Corporal Morrissette, the discarded item was a small glassine bag containing what appeared to be seven small cocaine rocks, later determined to be crack cocaine. At the time he was apprehended and placed under arrest, appellant possessed a pager and $62.00, mostly in one dollar bills.

DISCUSSION

I.

While booking appellant, Corporal Morrissette completed an intake form. In completing the intake form, Corporal Morrissette inquired of appellant whether appellant was a drug user, and appellant responded that he was not. Appellant's response was admitted at trial, as evidence that the drugs appellant possessed were for

distribution, rather than for his personal use.

Appellant contends that admission of his response constituted reversible error because he was not given *Miranda*[1] warnings prior to this response. On the other hand, the State contends that appellant waived his right to object to its admission because he had not objected when Corporal Morrissette was asked what appellant's response had been. Alternatively, the State contends that *Miranda*'s routine booking question exception applies, because the question was not asked to elicit an incriminating response.

Appellant objected when Corporal Morrissette was first asked the question, and the prosecutor argued that it was a routine booking question, an exception to *Miranda*. The trial court sustained the objection, directing the prosecutor to ask Corporal Morrissette why he had asked the question. After Corporal Morrissette said he did not know why he had asked the question, the trial court examined the booking form and said:

> This appears to be Prince George's County Form No. 3245, which has been in use since December of 1984. It looks like a standard booking form arrest report from the police department for an adult. And it seems to contain just basic information which is needed in order to process a criminal case and a person accused, and I'm going to overrule the objection and allow the answer.

Corporal Morrissette was then asked to identify the booking form, asked two preliminary questions regarding

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[1] *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

the form, and then again asked what appellant's response to that question had been. This time, appellant failed to object.

In order to preserve an objection for appellate review, it must generally be noted when such a question has been asked. Maryland Rule 4-323(a); *Brown v. State*, 90 Md. App. 220, 600 A.2d 1126, *cert. denied*, 326 Md. 661 (1992). In the case at hand, however, we do not believe appellant's failure to object constituted a waiver. We believe this to be a situation similar to that in *Watson v. State*, 311 Md. 370, 535 A.2d 455 (1988). In *Watson*, the defendant's motion *in limine* to exclude evidence of a prior conviction was denied. The defendant testified in his own defense. Immediately prior to his being cross-examined, the trial court reiterated that the defendant's prior convictions could be used for impeachment purposes. Defendant failed to object when the testimony was elicited. On appeal, the Court of Appeals said:

> As we see it, requiring *Watson* to make yet another objection only a short time after the court's ruling to admit the evidence would be to exalt form over substance.

Watson, at 373. *See also Dyce v. State*, 85 Md. App. 193, 582 A.2d 582 (1990).

In the case at hand, just prior to Corporal Morrissette being asked the rephrased question, the trial court had said unequivocally that Corporal Morrissette would be permitted to answer the question. Consequently, an additional objection would have done nothing more than highlight appellant's response. Accordingly, we must now turn to whether the trial court erred in not suppressing appellant's response.

In the past, we have recognized that routine booking

questions may be asked without giving *Miranda* warnings. Moreover, if the responses are incriminating, they may be used against the defendant. *Clarke v. State*, 3 Md. App. 447, 240 A.2d 291 (1967), *cert. denied*, 251 Md. 748 (1968). Clarke had been arrested for stealing tires, was given *Miranda* warnings and refused to talk to the police. While being booked, Clarke gave his name, address, and place of employment. While checking Clarke's workplace, a truck containing the stolen tires was found. Clarke argued that the police should not have been permitted to use the information given them during the booking procedure, as he had otherwise refused to speak to them. We rejected Clarke's argument, holding that obtaining Clarke's name, address, and place of employment while being booked, did not constitute a custodial interrogation. We explained:

> . . . it is apparent that the type of "interrogation" with which the Court was concerned in *Miranda* was an interrogation that had as its purpose the determination of the accused's connection with the commission of the crime and the revelation of crucial facts which would reflect upon his guilt or innocence of the crime for which he was being held. In decreeing that the warnings must be given prior to such interrogation, the ultimate purpose was, clearly, to prevent interrogations of the type that result in the will of the accused being overborne. Thus, the answers of the accused to questions propounded during such interrogation would be anything but freely and voluntarily given.

3 Md. App. at 450-51.

In *Rhode Island v. Innis*, 446 U.S. 291, 100 S.Ct. 1682,

64 L.Ed.2d 297 (1980), the Supreme Court extended *Miranda*'s protection to "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." 446 U.S. at 301. Although the *Innis* court recognized the booking exception to *Miranda*, a number of federal courts have interpreted *Innis* as requiring *Miranda* warnings to be given before routine booking if the questions to be asked are reasonably likely to elicit an incriminating response. *See, e.g., United States v. Taylor*, 799 F.2d. 126 (4th Cir. 1986), *cert. denied*, 479 U.S. 1093 (1987); *United States v. McLaughlin*, 777 F.2d 388 (8th Cir. 1985); *United States v. Avery*, 717 F.2d 1020 (6th Cir. 1983), *cert. denied*, 466 U.S. 905, *reh'g denied*, 406 U.S. 994 (1984); *United States v. Booth*, 669 F.2d 1231 (9th Cir. 1981). Conversely, other courts have held that the booking exception applies to routine questions asked during booking unless they are asked for the purpose of obtaining incriminating answers. *See, e.g., United States v. Glen-Archila*, 677 F.2d 809 (11th Cir. 1982), *cert. denied*, 459 U.S. 874 (1982); *People v. Rodriguez*, 444 N.Y.S. 2d 981 (App. Div. 1981).

We believe the latter view to have been established in *Pennsylvania v. Muniz*, 496 U.S. 582, 110 S.Ct. 2638, 110 L.Ed.2d 528 (1990). Muniz had been arrested and charged with driving while intoxicated, and was videotaped while performing certain tests and answering questions, including his name, address, height, weight, eye color, date of birth, and current age. Muniz was then asked the date of his sixth birthday. According to the Court, "Both the delivery and content of Muniz's answers were incriminating," 496 U.S. at 590, since his demeanor

was confused and his words slurred. In addition, he was unable to calculate or remember the date of his sixth birthday. Muniz contended that admission of the videotape violated his Fifth Amendment rights because he had not been given his *Miranda* warnings. The prosecutor countered that the answers to the first seven questions were asked during routine booking, and did not constitute custodial interrogation.

The Court held that Muniz's response to the date of his sixth birthday should have been suppressed. The Court then admitted the statement, saying:

> We disagree with the Commonwealth's contention that Officer Hosterman's first seven questions regarding Muniz's name, address, height, weight, eye color, date of birth and current age do not qualify as custodial interrogation as we defined the term in *Innis*, *supra*, merely because the questions were not intended to elicit information for investigatory purposes. . . . We agree with *amicus* United States, however, that Muniz's answers to these first seven questions are nonetheless admissible because the questions fall within a "routine booking question exception" which exempts from *Miranda*'s coverage questions to secure the "'biographical data necessary to complete booking or pretrial services.'" Brief for United States as *Amicus Curiae 12*, quoting *United States v. Horton*, 873 F. 2d 180, 181 n. 2 (CA8 1989). The state court found that the first seven questions were "requested for record-keeping purposes only," App. B16, and therefore the questions appear reasonably related to the police's

> administrative concerns. In this context, therefore, the first seven questions asked at the booking center fall outside the protection of *Miranda* and the answers thereto need not be suppressed.

496 U.S. at 601-2.

Despite *Muniz*, however, the routine booking question exception is not unlimited. Quoting from the United States' *amicus* brief, the Court recognized in a footnote that:

> Without obtaining a waiver of the suspect's *Miranda* rights, the police may not ask questions, even during booking, that are designed to elicit incriminating admissions.

496 U.S. at 602, n.14.

We have considered the routine booking question exception in cases dealing with questions such as name, *Ferrell v. State*, 73 Md. App. 627, 536 A.2d 99 (1988), *rev'd on other grounds*, 318 Md. 235, *cert. denied*, 497 U.S. 1038 (1990); *Grimes v. State*, 44 Md. App. 580, 409 A.2d 767 (1980), *rev'd on other grounds*, 290 Md. 236 (1981); address, *Propst, May & May v. State*, 5 Md. App. 36, 245 A.2d 88 (1968); and place of employment, *Clarke v. State*, *supra*. We believe, however, that the question and response here complained of was admissible because it fell within the routine booking question exception. According to Corporal Morrissette, these questions are asked of all persons arrested, despite the reason for their arrest. We agree with the trial court that such questions are relevant to whether an arrestee might need medical services, noting that such a question is asked on the district court commissioner's form. *See State v. Geasley*, 619 N.E.2d 1086, 1093 (Ohio App., 1993), in which it

was held that questions regarding an arrestee's medical condition was of legitimate police concern while booking a suspect. Moreover, such information may be relevant in considering bail. *See Commonwealth v. Daniels*, 612 A.2d 395 (Pa. 1992), *aff'd*, 644 A.2d 1175 (Pa. 1994), holding that questions of employment for determining eligibility for bail constituted routine biographical information necessary for pretrial services, falling within the routine booking question exception. *But see Commonwealth v. Woods*, *supra*.

For examples of questions held not to fall within the routine booking questions exception, *see State v. Rossignal*, 627 A.2d 524 (Me. 1993), *aff'd*, 654 A.2d 1297 (1995) (question to drunk driving suspect who was found parked on road as to whether she had a car); *U.S. v. Booth*, *supra*, (asking suspect why he was in the area and whether he had been previously arrested); *U.S. v. Downing*, 665 F.2d 404 (1st Cir., 1981) (questions regarding what key was and where airplane was).

We agree with appellant that if the Corporal's question had been asked to elicit an incriminating response, it would not have fallen within the exception, but appellant has presented no such evidence. We do not agree that, as appellant's answer to the question was incriminating, it had been asked for that purpose. *See, e.g., Clarke v. State*, *supra*; *Magar v. State*, 836 S.W. 2d 385 (Ark. App. 1992) (a defendant's response to a question about his age, given without *Miranda* warnings, could be used to establish an element of the offense with which he was charged); *United States v. Gill*, 879 F. Supp. 149 (D. Maine, 1995) (a statement by defendant regarding his place of birth could be used to establish the offense of making a false statement on a passport).

Accordingly, we hold that the question complained of was "necessary to complete booking or pretrial services." Thus the trial court did not err in admitting appellant's response into evidence.

II.

Appellant also contends that the evidence was insufficient to support his conviction, arguing that there was no evidence of an agreement between the individuals being surveilled.

In cases involving circumstantial or direct evidence, the standard of review is: whether, resolving all inferences in favor of the State, any rational fact finder could find the essential elements of the crime beyond a reasonable doubt. *Bloodsworth v. State*, 307 Md. 164, 512 A.2d 1056 (1986); *Finke v. State*, 56 Md. App. 450, 468 A.2d 353 (1983), *cert. denied*, 299 Md. 425 (1984), *cert. denied*, 469 U.S. 1043 (1984); *Nichols v. State*, 5 Md. App. 340, 247 A.2d 722 (1968), *cert. denied*, 253 Md. 735 (1969). Circumstantial evidence alone is entirely sufficient to support a conviction, provided the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused. *Finke*, *supra*, at 468-478.

A conspiracy has been defined as a combination of two or more persons who, by some concerted action, seek to accomplish an unlawful purpose or a lawful purpose by unlawful means. The essence of criminal conspiracy is an unlawful agreement. Such an agreement constitutes the crime, and the crime is complete without any overt act. *Mason v. State*, 302 Md. 434, 444, 488 A.2d 955 (1985). A conspiracy may be shown by circumstantial evidence

from which an inference of a common design may be drawn. *Kelley v. State*, 12 Md. App. 251, 258, 278 A.2d 87 (1971).

At trial, Corporal Fox was also presented by the State as a witness. According to Corporal Fox, when establishing a surveillance he looks for certain factors considered to be indicative of drug activity, such as groups gathering in dark areas where groups do not normally gather. On seeing such a group, Corporal Fox then looks for individuals approaching the group, making hand to hand transactions, and quickly leaving the area. Fox also looks for someone acting as a look-out. The State also presented Detective Richard Herbert as an expert witness in street level distribution of crack cocaine. Detective Herbert testified as to the "team concept" in distributing crack cocaine. Herbert explained that distributors of crack cocaine operate in groups, with each individual having a different role. He also testified that a typical drug dealer has a pager and carries small bills.

We have noted that appellant and four of those with him were congregated in a dark area near an apartment complex. This is in an area where groups do not ordinarily gather, and where there would be little pedestrian traffic. In addition, this was an area from which numerous complaints of drug activity had been received. Both Corporals Fox and Michael had observed three or four face to face transactions in which individuals had approached a member of the group, then quickly departed. One of the group had been observed walking around the apartment complex, appearing to be a look-out. When the uniformed police officers were seen, the group dispersed and ran from the area. It was then that appellant was observed discarding an object containing what turned

out to be seven rocks of crack cocaine. According to Detective Herbert, this was an amount of crack cocaine consistent with that which a dealer would have for distribution. When apprehended, appellant was carrying a pager and $62.00, mostly in one dollar bills. Viewing the evidence in the light most favorable to the State, we think that a rational jury could infer, as this one obviously did, that drug transactions were occurring in the area under surveillance. Moreover, the jury could have inferred beyond a reasonable doubt that appellant was involved in the drug transactions. Accordingly, the evidence was sufficient to support appellant's convictions.

JUDGMENTS AFFIRMED.

COSTS TO BE PAID BY APPELLANT.

APPENDIX C

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

Criminal Trials 93-1971A

STATE OF MARYLAND
vs.
MICHAEL PATRON HUGHES,
Defendant

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Upper Marlboro, Maryland
April 12, 1995

BEFORE:

THE HONORABLE DARLENE G. PERRY,
ASSOCIATE JUDGE

APPEARANCES:

ON BEHALF OF THE STATE:

Kristin Hileman, Esquire

ON BEHALF OF THE DEFENDANT:

Christopher Griffiths, Esquire

PROCEEDINGS

* * *

[By the Prosecutor]:

Q. Now, as I was asking you, you filled out an arrest report when you arrested Mr. Hughes?

[Corporal Morrissette]:

A. Yes, ma'am.

Q. And what sort of questions or information is filled out on that arrest report?

MR. GRIFFITHS [Defense Counsel]: Objection, your Honor.

THE COURT: Basis?

MR. GRIFFITHS: I can't see the relevance of that. Anything in the arrest report would be hearsay.

THE COURT: Overruled.

A. Personal information such as home address, work address, phone number.

THE COURT: Of whom?

THE WITNESS: Of the defendant.

BY MS. HILEMAN [Prosecutor]:

Q. Is that all booking information that you get from the person that you've arrested?

A. Yes, ma'am.

Q. And as part of your booking information do you ask the person whether or not they are a narcotics user?

A. Yes, ma'am.

Q. And do you recall whether or not you asked Mr. Hughes whether or not he uses narcotics?

A. Yes, ma'am.

Q. And do you recall what his answer was?

MR. GRIFFITHS: Objection.

THE COURT: Come up to the bench.

(Counsel approached the bench and the following proceedings ensued.)

MR. GRIFFITHS: Your Honor, this would be hearsay. It would also be a statement of the defendant that would be entitled to be suppressed by the defense if it were taken that Miranda rights were not read to the defendant prior to the taking of the statement. And we haven't been advised by the State that this statement will be used in this manner, and therefore we haven't had an opportunity to move to

suppress the statement.

MS. HILEMAN: Your Honor, this was a procedural booking question. It is part of the pedigree information. It is asked of every single person who is arrested, and I don't believe it's asked for any incriminatory purpose. Because it turns out to have some relevance does not mean – because the birth date turns out to have some relevance, but it is not asked in terms of trying to establish guilt or innocence with regard to a charge. It is asked of everyone.

THE COURT: Let me ask you to lay a foundation. I am going sustain it. You ask him why he asks that particular question.

MS. HILEMAN: Okay.

(Counsel returned to the trial tables and the proceedings resumed in court.)

BY MS. HILEMAN:

Q. Corporal Morrissette, this arrest report that you fill out, do you fill it out for every single person that you arrest?

A. Yes.

Q. Does it matter what they are charged with?

A. No.

Q. And the question of whether or not they are

narcotics users, is that something you ask every single person that is arrested?

A. Yes, ma'am.

Q. That you arrest. I'm sorry.

A. Yes.

Q. And does it matter what the charge is?

A. No.

Q. And why -- do you know why this is a question that is included in the general information on an arrest report?

MR. GRIFFITHS: Objection.

THE COURT: This requires a yes or no.

A. No, I don't.

THE COURT: Let me see the form. Do you have one that I can read?

MS. HILEMAN: Unfortunately that's the carbon.

THE WITNESS: I thought there was a xerox copy.

MS. HILEMAN: I have a copy, but I don't think it's much better than that one. And it's question No. 18 that's on that line.

THE COURT: This appears to be Prince George's County Form No. 3245, which has been in use since December of 1984. It looks like a standard booking form arrest report from the police department for an adult. And it seems to contain just basic information which is needed in order to process a criminal case and a person accused, and I'm going to overrule the objection and allow the answer.

THE CLERK: State's Exhibit No. 4 marked for identification.

(State's Exhibit No. 4 marked for purposes of identification.)

BY MS. HILEMAN:

Q. Corporal Morrissette, I'm showing you what has been marked State's Exhibit No. 4, and what is that document, just for the record?

A. Prince George's County Police Department arrest report.

Q. And who filled that document out?

A. I did.

Q. And on Question No. 18, which is part of the preprinted booking information, did you ask the defendant whether or not he was a narcotics or drug user?

A. Yes.

Q. And what was his response?

A. No, he was not.

* * *

(Counsel approached the bench and the following proceedings ensued.)

THE COURT: With regards to the Court's previous ruling that had to do with the statement made that he was not a drug user, the Court has reviewed its record and indicate that I have looked at the initial papers questionnaire, that Officer Morrissette took him before the commissioner, the initial papers questionnaire that the district court commissioner uses also asks the commissioner to circle whether the defendant appears to have, has admitting having or denies having an alcohol or drug problem. And on that particular form, which is information which is gotten from the defendant, there was the item circled denies having a drug problem. It was something that apparently the law enforcement people have on all of their forms.

MR. GRIFFITHS: I understand that, Your Honor. They put it on there as part of the intake, but it takes on a different form when it's used as evidence against the defendant, and for that reason he is entitled to the protective fifth amendment protection.

THE COURT: All right. That's a good point. All right.

MR. GRIFFITHS: Your Honor, with regard to that I am

going to ask a curative instruction be given to the jury, but I believe that the only true remedy in this matter is a motion for mistrial, and the reason being is because it's obvious that our defense is going to hinge on the fact that this was personal use and so this goes to the immateriality to that question. I don't think that a curative instruction could assist the jury in relieving the prejudice.

THE COURT: I am going to ask you to look and see if there are any cases particularly on point over the lunch.

MS. HILEMAN: I've looked at a few cases and basically I don't think there is anything on point with regard to that particular question. There are questions on point with regard to what bedroom in the house a person resides in when a crime is alleged to have occurred in that bedroom and they have held that that is -- that is just standard questions and that is a thing they could have gotten from other information as well, as well as other information, for instance, a person's date of birth, if it's alleged that -- I'm just analogizing now.

THE COURT: Let's let the jury go.

(Counsel returned to the trial tables and the following ensued in open court.)

THE COURT: Ladies and gentlemen, we are going to excuse you for lunch until 1:30, so you don't have to look at our backs. You might as well be eating lunch.

(The jury left the courtroom at 12:15 p.m.)

MS. HILEMAN: Your Honor, I have two witnesses waiting outside. Can I let them know they can go to lunch?

THE COURT: Let's do this first.

MS. HILEMAN: As I was indicating, Your Honor, I just briefly this morning pulled out a case, the Mills case, which is a Maryland case, and it cites another case, Clark.

MR. GRIFFITHS: Could we have the cites?

MS. HILEMAN: You can have them but I don't think it is going to do much good, 363 A. 2d 491.

In these cases a person was Mirandized but then asserted their right not to give statements or to have an attorney present.

THE COURT: Which is the same as being not Mirandized. What are the fact in that?

MS. HILEMAN: And what happened in these cases are that the defendants were asked questions in terms of -- what they considered to be booking or pedigree questions in terms of their address, in one instance it was which bedroom in a house the person resided in, that was listed as one of the questions, they actually asked that, and what the courts have held is that in those cases where it is a booking or pedigree question that is a standard question that's asked that isn't about the incident and doesn't necessarily go to the guilt or innocence of that person, that that is an allowable question for the police to ask as part

of their booking.

And I think in this case it's clear that this is a form where they ask that question. His answer to that, he is not a drug user. Whether that was true or not, obviously we don't know at this point, although Your Honor has pointed out that in fact he answered the same way on another question and, as noted yourself, that that is a standards question that is asked.

Now, the officer doesn't know why it's asked. He certainly didn't ask it to try to get inculpatory information. If he wanted inculpatory information he could have asked other questions, whether or not -- did you have this for your personal use, did you intend to give it away. He didn't ask those questions. He was filling out a form and he said are you a narcotics or drug user and the defendant said no. He checked no, and that was not meant as evidence, inculpatory or exculpatory evidence.

If he had only been charged with possession, for instance, which could have happened once it was screened, depending on the circumstances and the amount of drugs, as Your Honor well knows, many times the cases are -- they are charged as felonies by the police officers and then amended down to district court possession. That would have been exculpatory information.

So at that point the officer is just filling out pedigree information and he is not asking it in order to get or obtain evidence from the person in custody to help use against them in the course of a trial.

And what the courts seem to have held, although I couldn't find anything specifically with regard to this question, I think that it's clear that it matters with regard to whether or not it's a standard question that's asked and whether or not it's asked in order to try to get any sort of inculpatory information about the person. And where it could have been gotten from other sources, for instance, with an address, the courts held, well, they got the address from him but they could have gotten the address from somebody else if they really wanted to. Well, the officer could have gotten the information when he filled out the forms with the commissioner if he wanted to. He was there when many of the questions were answered.

And also, in the one instance, which bedroom the person ended up in did become evidence in the trial. I know for myself that in statutory sex offenses sometimes we will use the arrest report where the person gives their own date of birth as evidence of the age of the defendant. That certainly is not requested by the officer in order to get incriminating information about the defendant and it could be gotten from other sources.

MR. GRIFFITHS: Your Honor, I'm kind of at a disadvantage. I haven't explored the whole pedigree question in a while, but I would appreciate the opportunity to inform the Court, but I think it is going to boil down to in this case that under Miranda whether or not there was a detention and if so then, you know, he is entitled to be properly advised of his rights before he is asked of any questions that might be used against him. And you have to look at how the information is being used and not necessarily what the nature of the information is in

custodial situations --

THE COURT: Suppose he asked him what his name was and he gave him a phony answer. Is there no information that can be given? Is it your position that -- is it your position that everybody has to be Mirandized before they are booked?

MR. GRIFFITHS: If that information is going to be used against them, your Honor, yes.

THE COURT: I can see a reason why they would ask that question. And the officer -- apparently nobody told him, but if somebody is a drug user it is going to have a bearing upon whether or not -- if they are going to ask them questions whether or not they are cognizant and can give a voluntary statement. It has to do with their state of sobriety.

And also if they are going to be taken into custody, it is important that the officers and the detention people know whether there is a drug problem so they can expect to have to medicate the person or isolate them or if there is going to be some kind of withdrawal problem they have to deal with medically. So I can see a valid reason for asking the question.

MR. GRIFFITHS: I think there are probably plenty of benign questions, on the surface anyway, questions that might be asked an individual, but when they are used in a manner to inculpate them, that's what the Court has to look at, but I would be happy to get the courts and law on that and better advise this Court.

THE COURT: I am going to overrule the objection at this point, and I do need, if it goes up on appeal, if that becomes necessary, I do need to put on the record that I do take judicial notice of the questionnaire which came before the district court commissioner in this case.

MR. GRIFFITHS: Just so the record is clear, in this case there was a motions hearing and at that time the officer was asked whether or not there was any statements taken from the defendant, and the officer stated that there were not. And the motions hearing obviously would have been the proper forum in which to address this issue.

At this point any prejudice -- and I think it's substantial prejudice in this case, as I have stated, has already been, you know, put before the jury. And so I just wanted to make the record clear on that, that this issue was in some ways addressed in a motions hearing.

MS. HILEMAN: Just to address that ruling briefly, I think, Your Honor, when an officer is asked if there were any statements taken they are not being referenced to booking questions.

THE COURT: No one specifically asked him about booking statements?

MS. HILEMAN: Not that I'm aware of, Your Honor. This motion was before I was even in the narcotics division, so I can't say that, but it's my belief that that question refers to any statement about the incident, not booking questions. And as Your Honor pointed out, if someone gives a false name and they are charged by the

false name, by counsel's theory we can't use the fact that they gave a different name and prosecute them for that.

THE COURT: That was my point. Let's go to lunch.

(A recess was had.)

* * *